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11 DALLAS COUNTY HISTORICAL FOUNDATION D/B/A THE SIXTH FLOOR MUSEUM AT  
12 DEALEY PLAZA

13 **UNITED STATES DISTRICT COURT**

14 **NORTHERN DISTRICT OF CALIFORNIA**

15 FOIA CONSCIOUSNESS.COM LLC, a California  
16 limited liability company,

17 Plaintiff,

18 vs.

19 NATIONAL ARCHIVES AND RECORDS  
20 ADMINISTRATION, a federal agency,

21 Defendant, and

22 DALLAS COUNTY HISTORICAL FOUNDATION  
23 d/b/a THE SIXTH FLOOR MUSEUM AT DEALEY  
24 PLAZA

25 Respondent.

) Case No. 3:24-CV-00997-JD

) *Hon. James Donato*

) **RESPONDENT'S REPLY IN**  
) **SUPPORT OF ITS MOTION TO**  
) **DISMISS PLAINTIFF'S COMPLAINT**  
) **FOR LACK OF PERSONAL**  
) **JURISDICTION**

) Date: June 6, 2024

) Time: 10:00 a.m.

) Courtroom: 11

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Respondent Dallas County Historical Foundation d/b/a the Sixth Floor Museum at Dealey Plaza (“Museum”) hereby submits its reply in support of the Museum’s Motion to Dismiss Plaintiff’s Complaint For Lack of Personal Jurisdiction (“Motion”).

#### **I. INTRODUCTION**

Properly, there is only one issue the Court must decide on the Museum’s Motion. The issue is whether the Court has personal jurisdiction over the Museum. Once a personal jurisdiction issue is raised, a plaintiff has the burden of demonstrating there are sufficient contacts with the forum to warrant hailing a party into court in that forum. Here, plaintiff FOIACONCIOUSNESS.COM (“Plaintiff”) has presented no evidence of such contacts, and instead confuses matters by spending most of its briefing on whether the Museum is a “necessary” party, when the law is clear that the Court must have jurisdiction over the Museum before that question is at all relevant. Perhaps Plaintiff has taken this approach because it is so clear the Museum has done nothing in California warranting a finding of personal jurisdiction. The Museum is not so involved in California that general jurisdiction is warranted, and Plaintiff never argues otherwise. And the facts and case law make clear that here, where Plaintiff admits it never had any contact with the Museum, specific jurisdiction also does not exist. Plaintiff cites no authority whatsoever justifying jurisdiction over the Museum, and the Museum submits that in fact there is no authority supporting the Court’s exercise of personal jurisdiction.

Plaintiff contends the Court must keep the Museum in the case because it is a “necessary party” pursuant to Federal Rule of Civil Procedure 19. Rule 19 does not apply, however, if joinder is not feasible, including “when the absentee is not subject to personal jurisdiction.” *E.E.O.C. v. Peabody W. Coal Co.*, 400 F.3d 774, 779 (9th Cir. 2005).

The Opposition concedes the Museum lacks the requisite contacts for general jurisdiction in California. Nor has the Museum purposefully availed itself of the forum to provide specific jurisdiction. Plaintiff never requested access to the film that is the subject of its FOIA request from the Museum. Prior to its receipt of the Summons and Complaint, the Museum was not even aware of Plaintiff’s FOIA request to the National Archives and Records Administration (“NARA”) or of NARA’s denial of the request. And even if Plaintiff had contacted the Museum for a copyright license

1 prior to filing the Complaint, which it admits it did not, the law is clear that the Museum's act of  
2 responding to Plaintiff's request would not have been sufficient to confer jurisdiction in California.

3 NARA does not act, and has never acted, as the Museum's agent relating to the Zapruder film  
4 despite the unsupported claim otherwise in the Opposition. Nor does the Museum's operation of a  
5 website constitute purposeful availment giving rise to specific jurisdiction in California for a claim  
6 that has nothing to do with any sale or other conduct relating to the web site, and where the web site  
7 is in no way directed specifically to California.

8 The only issue raised in the Museum's Motion is whether there is personal jurisdiction over  
9 the Museum. As set forth in the Motion and this Reply, the Museum respectfully submits that there  
10 is no personal jurisdiction over the Museum, the Motion should be granted, and the claims against the  
11 Museum should be dismissed for lack of personal jurisdiction.

12 **II. THE COURT SHOULD DISMISS PLAINTIFF'S COMPLAINT AGAINST THE**  
13 **MUSEUM FOR LACK OF PERSONAL JURISDICTION**

14 **A. Whether the Museum Is A Necessary Party Is Not Relevant to the Determination**  
15 **of Personal Jurisdiction.**

16 On the first page of its Opposition, Plaintiff states the Court must decide whether the Museum  
17 is a necessary party under Federal Rule of Civil Procedure 19. This is not the issue before the Court.  
18 The only issue raised in the Motion is whether personal jurisdiction exists over the Museum. Even if  
19 the Court determines that the Museum is a necessary party under Rule 19, case law is clear that such  
20 a finding does not confer personal jurisdiction, which is a separate inquiry.

21 In other words, the determination of whether a party is necessary to an action under Rule 19 is  
22 not an alternative means to justify a finding of personal jurisdiction over that party. Plaintiff cites  
23 *Clinco v. Roberts*, 41 F. Supp. 2d 1080, 1082 (C.D. Cal. 1999) for the proposition that "[a] person  
24 falling within the scope of Rule 19(a) must be joined to the ongoing action if feasible." This rule is  
25 inapplicable here for two reasons. First, the Museum does not fall within the scope of Rule 19(a)  
26 because the rule defines a required party as a "person who is subject to service of process." Fed. R.  
27 Civ. P. 19(a). Second, it is *not* feasible to join the Museum because it is not a party subject to personal  
28 jurisdiction. *E.E.O.C. v. Peabody W. Coal Co.*, 400 F.3d 774, 779 (9th Cir. 2005). "Rule 19(a) sets

1 forth three circumstances in which joinder is not feasible: when venue is improper, *when the absentee*  
2 *is not subject to personal jurisdiction*, and when joinder would destroy subject matter jurisdiction.”  
3 *Id.* (emphasis added). Therefore, the question of whether a party is “necessary” pursuant to Rule 19  
4 is irrelevant where, as here, the party is not subject to personal jurisdiction.

5 The Opposition’s reliance on *Weisberg v U.S. Dep’t. of Justice*, 631 F.2d 824 (D.C. Cir. 1980)  
6 to claim the Museum must remain in the case as a “necessary” party is entirely misplaced. No question  
7 of personal jurisdiction was addressed in *Weisberg* and the court itself pointed out that the copyright  
8 holder was not an indispensable party (if it was, then the case could not proceed without it), but rather  
9 only a necessary one, which should be joined *only if feasible*. *Id.* at 831; *Disabled Rights Action v.*  
10 *Las Vegas Events*, 375 F.3d 861, 868 n.5 (9th Cir. 2004).

11 Finally, although the *Weisberg* court had a concern for the possibility of “inconsistent  
12 obligations” being imposed on the government, the court acknowledged that the issue of whether the  
13 copyright holder could be made a party to the case should be addressed by the court on remand and  
14 that it was possible that joinder might be infeasible. *Id.* at 829, 831. TIME was not a party to that  
15 case, had not been served with process, nor had it been afforded the opportunity to contest personal  
16 jurisdiction. *Id.*

17 Whether the Museum is a necessary party pursuant to Federal Rule of Civil Procedure 19 is  
18 not relevant to the Court’s determination whether personal jurisdiction exists over the Museum. The  
19 inquiries are separate. *E.E.O.C.*, 400 F.3d at 779.

20 **B. Plaintiff Concedes There is No General Jurisdiction Over the Museum in**  
21 **California.**

22 It is well established there are two forms of personal jurisdiction: (a) “general jurisdiction,”  
23 which applies where a defendant is so “at home” in the forum so that a court may adjudicate any claims  
24 against the defendant arising from anywhere in the world; and (b) “specific jurisdiction,” which allows  
25 a court to adjudicate claims that arise out of the defendant’s suit-related contacts with the forum state.  
26 *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S.Ct. 2846, 2851 (2011).

27 Given the facts presented by the Museum, Plaintiff’s Opposition does not dispute that the  
28 Museum lacks the requisite contacts with California to provide general jurisdiction.

1           **C.     The Museum Is Not Subject to Specific Jurisdiction in California.**

2           As provided in detail in the Museum’s Motion, the Court may only exercise specific  
3 jurisdiction if it finds the Museum: (1) purposefully directed activities or consummated some  
4 transaction with California, thereby invoking the benefits and protections of its laws; (2) Plaintiff’s  
5 FOIA claim arises out of or relates to the Museum’s forum-related activities; and (3) the exercise of  
6 jurisdiction is reasonable. *Dole Food Co., Inc. v. Watts*, 303 F.3d 1104, 1111 (9th Cir. 2002). Plaintiff  
7 fails to satisfy its burden of establishing that the first two prongs of the test for specific jurisdiction are  
8 satisfied. *Sher v. Johnson*, 911 F.2d 1357, 1361 (9th Cir. 1990); *Burger King Corp. v. Rudzewicz*, 471  
9 U.S. 462, 476–78 (1985) (only if plaintiff satisfies its burden for the first two elements does the burden  
10 shift to defendant to present a compelling case that exercise of jurisdiction would not be reasonable).

11           The Museum did not direct any activities toward California from which the pending case arises.  
12 The Museum never even received a request regarding the Zapruder film from Plaintiff. Dkt. No. 26-  
13 1 (Declaration of Nicola Longford, ¶ 12). The Museum did not know about Plaintiff’s FOIA request,  
14 or NARA’s response thereto, until the Museum was served with the Complaint. *Id.* Nor has the  
15 Museum ever had *any* interaction with Plaintiff relating to any subject prior to the pending lawsuit.  
16 *Id.* The Opposition does not identify any contacts the Museum has with California sufficient to  
17 provide specific jurisdiction, let alone contacts from which Plaintiff’s claim for violation of FOIA  
18 arose.

19                   **1.     The Museum Does Not Have An Agency Relationship With NARA.**

20           Recognizing that the Museum never dealt with it at all, Plaintiff makes the specious argument  
21 that the Museum has “effectively authorized NARA to act as its agent” and, therefore, NARA’s  
22 contacts with California, vis-à-vis Plaintiff, should be attributed to the Museum. Opposition at 8:23-  
23 9:3. While an agent’s activities in a forum state may give rise to specific jurisdiction over the principal  
24 (*Sher*, 911 F.2d at 1362), that rule is not applicable here because there is no principal-agent relationship  
25 between the Museum and NARA, and Plaintiff has produced no evidence to this effect. Further, as  
26 explained in the following section, even actions to enforce a copyright do not confer personal  
27 jurisdiction.  
28

1 The existence, or lack thereof, of a principal-agent relationship is determined by state law.  
2 *Ochoa v. J.B. Martin & Sons Farms, Inc.*, 287 F.3d 1182, 1189-90 (9th Cir. 2002). An agent, as  
3 defined in California Civil Code section 2295, is one who represents the principal in dealings with  
4 third persons. The essential elements of an agency relationship are (1) the agent holds power to alter  
5 legal relations between the principal and third persons and between the principal and himself; (2) the  
6 agent is a fiduciary with respect to matters within the scope of the agency; and (3) the principal has  
7 the right to control the conduct of the agent with respect to matters entrusted to him. *Garlock Sealing*  
8 *Techs., LLC v. NAK Sealing Techs. Corp.*, 148 Cal. App. 4th 937, 964 (2007), *as modified on denial*  
9 *of reh'g* (Apr. 17, 2007). An agency relationship is a bilateral relationship created through mutual  
10 consent between the principal and agent; there must be a manifestation of consent by one person to  
11 another that the other shall act on his behalf and subject to his control. *Rental Hous. Owners Assn. of*  
12 *S. Alameda Cnty., Inc. v. City of Hayward*, 200 Cal. App. 4th 81, 91 (2011); *van't Rood v. Cnty. of*  
13 *Santa Clara*, 113 Cal. App. 4th 549, 572 (2003) (“The fact that parties had a preexisting relationship  
14 is not sufficient to make one party the agent for the other. An agency is proved by evidence that the  
15 person for whom the work was performed had the right to control the activities of the alleged agent.”).

16 The Museum never authorized NARA to act as its agent. The Museum certainly does not  
17 control the federal government’s actions regarding property in the government’s control and the  
18 government can make no decisions on behalf of the Museum regarding the Museum’s copyright. The  
19 Opposition provides no evidence of such a relationship. To the contrary, Plaintiff concedes in the  
20 Complaint that NARA informed Plaintiff that it did *not* have authority to provide the film and  
21 “permission to reproduce the Zapruder film must be obtained [directly] from the Sixth Floor Museum.”  
22 Compl. ¶ 74. Therefore, the first element required to show agency—that NARA holds power to alter  
23 the legal relationship of the Museum—is not satisfied. The Museum has never had a written or  
24 unwritten agreement with NARA regarding the copyright to the Zapruder film. Supplemental  
25 Declaration of Nicola Longford (“Suppl. Longford Decl.”), ¶ 2. The Museum has never authorized  
26 NARA to act as its agent regarding requests for the Zapruder film or in any other capacity. *Id.* NARA  
27 is not authorized, and has never been authorized, to take any action binding on the Museum in  
28

1 connection with the copyright to the Zapruder film. *Id.* ¶¶ 3, 5. Nor is the Museum authorized to take  
2 any action on behalf of NARA. *Id.*

3 The Opposition claims, without any support, that NARA “clearly [...] did not say on its own  
4 accord” that “permission to reproduce the Zapruder film must be obtained from the Sixth Floor  
5 Museum before copies can be made” and thus NARA must be acting as the Museum’s agent in  
6 asserting the copyright. Opp. at 9:17-19. The Museum has never had or exercised any authority over  
7 any policy set by NARA, let alone with respect to the Zapruder film. The Museum is not authorized  
8 to direct, and has never directed, NARA’s response to requests for the Zapruder film. Suppl. Longford  
9 Decl., ¶ 4. It was NARA, not the Museum, which determined that FOIA requestors should approach  
10 the Museum for approval relating to the Zapruder film. *Id.* NARA’s requirement that a person first  
11 obtain permission from the Museum is not unique regarding the Zapruder film, and presumably is  
12 reflective of a general process NARA uses designed to recognize copyright rights. *Id.*

13 Finally, Plaintiff’s claim is incorrect that NARA “asserted” the copyright to the Zapruder film.  
14 NARA is not the copyright holder to the film, the Museum is. Therefore, NARA has no authority to  
15 assert the copyright as Plaintiff claims, but as is clear in the record, NARA instead merely informs  
16 requestors such as Plaintiff of the existence of the copyright and the need to obtain permission from  
17 the actual copyright holder.

18 There is no agency relationship between the Museum and NARA, and certainly not one that  
19 would give rise to specific personal jurisdiction. The actions of NARA cannot be attributed to the  
20 Museum for the purpose of evaluating personal jurisdiction over the Museum.

21 **2. Denial Of A Copyright License Does Not Confer Jurisdiction In The**  
22 **Requester’s Home State.**

23 Even if Plaintiff had made a request for a copyright license to the Museum, which it admits it  
24 did not (Compl. ¶¶ 56-57), the grant or denial of a copyright license is not sufficient to confer  
25 jurisdiction in California. The act of responding to a request for a copyright license from an entity  
26 located in California does not constitute purposeful availment of the forum. Plaintiff argues that it is  
27 fair for the Court to exercise specific jurisdiction over the Museum “for its assertions of copyright  
28 over Plaintiff.” Opp. at 1:20-21. This is both factually and legally incorrect. The Museum has made

1 no assertions of copyright to Plaintiff because Plaintiff, admittedly, never reached out to the Museum  
2 regarding its FOIA request. Compl. ¶¶ 56-57; Suppl. Longford Decl. ¶ 6. It is also inconsistent with  
3 case law in this jurisdiction.

4 In *Yahoo! Inc. v. La Ligue Contre Le Racisme Et L'Antisemitisme*, 433 F.3d 1199, 1208-1209  
5 (9th Cir. 2006), the court held that a defendant's mailing of a cease-and-desist letter to the plaintiff's  
6 California headquarters was not sufficient, on its own, to grant personal jurisdiction over the  
7 defendant, a French entity. In that case, the non-resident defendant acted *proactively* in sending a  
8 letter to the California resident, rather than reactively by merely responding to a California resident's  
9 copyright license request, yet the Ninth Circuit found that this deliberate outreach to Yahoo! did not  
10 confer personal jurisdiction. *Id.*

11 The court in *Douglas Furniture Co. of California v. Wood Dimensions, Inc.*, 963 F. Supp. 899  
12 (C.D. Cal. 1997) similarly held that defendant's sending of two cease-and-desist letters did not  
13 constitute purposeful availment. There, the court noted that holding otherwise would lead to the  
14 unreasonable requirement that an intellectual property owner risk having to submit to the jurisdiction  
15 of an alleged infringer in order to exercise its rights. *Id.* at 903.

16 Even if Plaintiff had requested permission from the Museum for the film, and the Museum had  
17 responded to Plaintiff's request, it would have been improper to then subject the Museum to personal  
18 jurisdiction in California simply because it responded to a Californian entity. Doing so would be  
19 tantamount to announcing the false notion that all copyright holders "are susceptible to suit in this  
20 forum if they assert their rights against a [forum] resident." *Id.* (quoting *KVH Industries, Inc. v. Moore*,  
21 789 F. Supp. 69, 73 (D.R.I. 1992)).

22 Plaintiff's argument that the Museum somehow subjected itself to personal jurisdiction in  
23 California with regard to its copyright to the Zapruder film is unsupported both by the facts and the  
24 law.

### 25 3. The Museum's Website Is Not Sufficient To Grant Specific Jurisdiction.

26 Plaintiff's argument that the Museum's operation of a website and online store constitute  
27 purposeful availment also fails. Opp. at 9:4-11.

1 As a preliminary matter, Plaintiff's single cause of action for violation of FOIA does not arise  
2 out of any alleged sale or other activity on the Museum's website. For this reason alone, the website  
3 is irrelevant to finding specific jurisdiction over the Museum in this case. *Dole Food Co.*, 303 F.3d at  
4 1111 (requisite element for specific jurisdiction is claim arises out of forum related activities).

5 The Opposition cites no case law in support of its theory that the Museum's website provides  
6 sufficient contacts to provide jurisdiction, likely because the existing case law is to the contrary. In  
7 *Briskin v. Shopify, Inc.* 87 F.4th 404 (9th Cir. 2023), the court analyzed whether the defendant, a web-  
8 based payment processing platform, exposed itself to specific personal jurisdiction in California by its  
9 handling of the data of a consumer who was from and made a purchase online from California. The  
10 Ninth Circuit held that "[w]hen a company operates a nationally available e-commerce payment  
11 platform and is indifferent to the location of end-users, the extraction and retention of consumer data,  
12 without more, does not subject the defendant to specific jurisdiction in the forum where the online  
13 purchase was made." *Briskin*, 87 F.4th at 421. The court noted that "the fact that a broadly accessible  
14 web platform knowingly profits from consumers in the forum state is not sufficient to show that the  
15 defendant is expressly aiming its intentional conduct there;" instead, the website or web platform must  
16 have a "forum-specific focus" or must specifically appeal to an audience in a particular state or actively  
17 target that state. *Id.* at 419-20. The court found that the defendant's platform met none of these  
18 criteria. *Id.* at 422. The plaintiff "would have suffered the same injury regardless of whether [the  
19 defendant] was a California company and regardless of whether [the plaintiff] was physically located  
20 in California when he made his purchase." *Id.* at 422-23.

21 Like Shopify, there is nothing specific on the Museum's website specifically targeted or  
22 marketed to Californians in any way. Suppl. Longford Decl. ¶ 7. The website does not host any  
23 advertisements pertaining to Californians. *Id.* The website primarily contains information about the  
24 Museum's location and hours of operation, as well as some information about the Museum's education  
25 mission and its collections and research resources. *Id.* The mere existence of the website and the fact  
26 that it is accessible to Californians, and occasionally makes sales to them, is insufficient to confer  
27 personal jurisdiction in California. Dkt. No. 26-1 (Longford Decl., ¶ 11 [the Museum fulfilled 24 total  
28

1 online orders shipped to California in the last year].) This is certainly so in a case where the claim has  
2 nothing to do with the website.

3 **D. Final Points**

4 The Museum lacks the requisite contacts to provide the Court general or specific jurisdiction  
5 over the Museum in California. The Court's jurisdiction analysis can and should stop here.

6 The Museum is a non-profit educational organization which, never having any contact with  
7 Plaintiff until sued in this case, has been named in a lawsuit far from its Dallas home. It has no  
8 insurance to cover this kind of lawsuit and being made to litigate this case in California would be a  
9 substantial burden both financially and in terms of the time required of its already limited staff  
10 resources.

11 Moreover, although irrelevant to the question of personal jurisdiction, even if the Museum is  
12 dismissed from the case, Plaintiff can still pursue its cause of action for alleged violation of FOIA  
13 against NARA. Plaintiff, after all, has not even named the Museum as a defendant but only as a  
14 "Respondent" in this case. The only relief Plaintiff seeks is relief against defendant NARA.

15 **III. CONCLUSION**

16 The Museum respectfully requests that the Court grant its motion to dismiss this case for lack  
17 of personal jurisdiction.

18  
19 Dated: May 15, 2024

Respectfully submitted,

20 LOCKE LORD LLP

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27  
28